THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.5655 OF 2006

Dated: 21-03-2006

BETWEEN

Yedla Suresh Kumar,

S/o. Sitaram,

Occ: Business,

R/o.21-5-400,

Puranapul,

Hyderabad.

...PETITIONER

AND

Municipal Corporation of Hyderabad,

Rep. by its Commissioner, Lower Tank Bund,

Hyderabad.

...RESPONDENT

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondent and its authorities in issuing proceedings under Section 456 of the Hyderabad Municipal Corporations Act, 1955 (for short

'the Act') is Letter No.400/5/21/ACP/C2/MCH/2006 dated 14.03.2006 as illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner is the tenant in occupation of the premises bearing No.21-5-400 situated at Puranapul, Hyderabad and as the landlord was illegally interfering with his peaceful possession, the petitioner filed a suit O.S.No.715 of 2005 on the file of the VIII Junior Civil Judge, City Civil Court, Hyderabad and obtained injunction and the said suit is still pending. He further submits that at the instance of the landlord the respondent issued a notice under Section 459 of the Act dated 02.05.2005 calling upon the petitioner/owner/occupant of the said building to explain within seven days as to why the dilapidated structures shall not be pulled down as the same is in dangerous condition. He further submits that the said notice has not been served on the petitioner but it was served on the owner only and for the obvious reasons the petitioner has not filed any objections.

The learned counsel further submits that petitioner filed WP.No.11048 of 2005 on the file of this Court against the respondent in making preparations to demolish the said building bearing Nos.21-5-388 to 399 & 400 to 405. He further submits that the petitioner is the tenant in respect of shop bearing No.21-5-400.

This Court considered the said writ petition and the counter affidavit filed by the respondents therein and as per the report submitted by the Executive Engineer, it was observed that the overall structures of the premises is in dilapidated condition posing grave danger to inhabitants of the building and therefore, the matter was then placed before the Assistant City Planner Circle – II, who directed to issue notice under Section 459 of the Act by enclosing the report of the Executive Engineer, Zone-II. The writ petition was dismissed on the ground that when the respondent-corporation was about to issue a notice the said writ petition was filed on mere apprehension and now that final notice is yet to be issued and when the final notice is issued, the petitioner, as an occupant of the building may raise all the objections.

Learned counsel for the respondents submits that final notice under Section 456 of the Act has been issued directing the owner/occupier to demolish the structures within three days since the structures are in dangerous condition and it may collapse any moment causing danger to the inmates and neighbours and cause other problems. He further submits that as per the aforesaid judgment of this Court the petitioner is not entitled for any relief in this

writ petition.

Having regard to the facts and circumstances of the case,
the petitioner is permitted to file objections pursuant to the impugned notice issued under Section 456 of the Act in Lr.No.400/5/21/ACP/C2/MCH/2006 dated 14.03.2006 within one week from the date of receipt of a copy of this order in addition to the objections said to have already been filed on 20.03.2006 and if any such objections are filed, the respondent-corporation shall consider and dispose the same. However, if the objections are untenable, it is open for the respondent-corporation to pass orders for pulling down the said structures.

The writ petition is accordingly disposed of.

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V. ESWARAIAH, J

March 21, 2006

DSK